

Securities and Exchange Commission

§ 240.14d-4

(1) An amendment to Schedule TO (§240.14d-100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and

(2) A final amendment to Schedule TO (§240.14d-100) reporting promptly the results of the tender offer.

Instruction to paragraph (b): A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

(c) *Certain announcements.* Notwithstanding the provisions of paragraph (b) of this section, if the additional tender offer material or an amendment to Schedule TO discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject company, any exchange and/or the NASD, as required by paragraph (a) of this section, promptly after the date such tender offer material is first published or sent or given to security holders.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a-37(a))

[44 FR 70341, Dec. 6, 1979; 64 FR 61460, Nov. 10, 1999]

§ 240.14d-4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by §240.14d-6 to security holders of the class of securities that is the subject of the offer, by com-

plying with all of the requirements of any of the following:

(a) *Cash tender offers and exempt securities offers.* For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(1) *Long-form publication.* The bidder makes adequate publication in a newspaper or newspapers of long-form publication of the tender offer.

(2) *Summary publication.* (i) If the tender offer is not subject to Rule 13e-3 (§240.13e-3), the bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(ii) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under §240.14d-5 must comply with paragraph (a)(1) or (2) of this section on or before the date of the bidder's request under §240.14d-5(a).

Instruction to paragraph (a): Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under §240.14d-5, paragraphs (a)(2) and (a)(3) of this section are exclusive.

(b) *Registered securities offers.* For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary prospectus or a prospectus that meets the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)), including a letter of transmittal, is delivered to security holders. However, for going-private transactions (as defined by §240.13e-3) and roll-up transactions (as described by Item 901 of Regulation S-K (§229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and

only a prospectus that meets the requirements of section 10(a) of the Securities Act may be delivered to security holders on the date of commencement.

Instructions to paragraph (b):

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under §§ 230.430 or 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162(a) of this chapter.

(c) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(d) *Publication of changes and extension of the offer.* (1) If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in this section, a material change in the information published or sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant to rule 14d-5 (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to Rule 14d-5, the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to Rule 14d-5.

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer

materials are disseminated to security holders, as follows:

(i) Five business days for a prospectus supplement containing a material change other than price or share levels;

(ii) Ten business days for a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a prospectus supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a-37(a))

[44 FR 70341, Dec. 6, 1979, as amended at 64 FR 61460, Nov. 10, 1999]

§ 240.14d-5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

(a) *Obligations of the subject company.* Upon receipt by a subject company at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e) of this section, the subject company shall comply with the following sub-paragraphs.

(1) The subject company shall notify promptly transfer agents and any other person who will assist the subject company in complying with the requirements of this section of the receipt by the subject company of a request by a bidder pursuant to this section.

(2) The subject company shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject company was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject company shall